Public Prosecutor v Hirris Anak Martin and Another
[2009] SGHC 132

Case Number : CC 19/2009

Decision Date : 28 May 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Amarjit Singh and Diane Tan (Deputy Public Prosecutors) for the prosecution; R.S. Bajwa (Bajwa & Co) and Sarinder Singh (Singh & Co) for the first accused; Mahmood Gaznavi (Mahmood Gaznavi & Partners) and Vinit Chhabra (Vinit Chhabra Partnership) for the second accused

Parties : Public Prosecutor — Hirris Anak Martin; James Anak Anggang

Criminal Law

28 May 2009

Choo Han Teck J:

1 The first accused was 22 years old at the time of the charge, and the second accused was 23 years old. They were from Sarawak, Malaysia. The first and second accused were jointly charged for an offence under s 394 read with s 397 of the Penal Code, Cap 224 (Rev Ed 1985). They pleaded guilty to the charge before me and were sentenced to 10 years' imprisonment and 24 strokes of the cane. The charge arose from the robbery of one Abu Saleh Taser Uddin Ahmed ("Abu Taser"), a 24-year old man in Lorong 25, Geylang between 11.30pm on 23 January 2008 and 6.18am on 24 January 2008. Both accused stated that they were drinking Chinese liquor in the evening of 23 January 2008 with some others when they ran out of liquor. One of them, known as "Ah Choi" suggested that the three of them go and look for money, which appeared from the Statement of Facts to be an euphemism for robbery. They went looking for a victim. They found a metal rod along the way and took turns to carry it. When they found Abu Taser sitting in an open field nearby, they attacked him, but it was Ah Choi who swung the metal rod at Abu Taser. Abu Taser subsequently died from a haemorrhage due to a fractured skull. The trio then took Abu Taser's wallet containing $50.00, a work permit, a POSB ATM card, a telephone booklet and an EZ-Link card. Ah Choi used the money to buy six cans of beer and split the remainder among them, with each receiving $12.00. Ah Choi has not been caught. They had hitherto no antecedents although in the proceedings before me the second accused pleaded guilty to a separate offence committed on 13 January 2008.

2 The second charge of the second accused was also for an offence under s 394 of the Penal Code, Cap 224 (Rev Ed 1985). In that offence, the second accused robbed one Molfot Bepari Moslem Bepari ("Molfot") at a bus-stop at about 11.30 pm after punching and kicking him in the face. The second accused then took away Molfot's mobile telephone and sold it for $30.00. I sentenced the second accused to 5 years imprisonment and 12 strokes of the cane in respect of the second charge. The prosecution submitted that the two sentences of imprisonment should run consecutively. I ordered that they run concurrently. Section 394 provides a minimum sentence of imprisonment of 5 years and a maximum of 20 years. In addition there is a minimum mandatory sentence of 12 strokes of the cane. When s 394 is read with s 397 as was the case in respect of the first charge against both accused, the court is obliged to impose an additional 12 strokes of the cane. Although the two robbery offences were discrete, given the facts, I am of the view that the overall imprisonment of 10 years' imprisonment and 24 strokes of the cane was adequate punishment. I was of the view that

there was little to distinguish the two in respect of their participation in the first charge. Since the second charge was a discrete offence it would not be right to impose a higher term of imprisonment against him in respect of the first charge. In my view, I could have imposed a sentence slightly higher than 10 years but lower than 15 years for the second accused on the first charge had the prosecution applied for the second charge to be taken into account for sentencing of the first charge (of the second accused). Since it did not, the fairest and most appropriate order was to have the two sentences of imprisonment to run concurrently because, in my view, a total of 15 years imprisonment in the circumstances would be too harsh.